

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs May 15, 2007

**STATE OF TENNESSEE v. DERRICK CRAWLEY**

**Direct Appeal from the Circuit Court for Montgomery County  
Nos. 40400619, 40500759 John H. Gasaway, III, Judge**

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**No. M2006-01895-CCA-R3-CD - Filed July 5, 2007**

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The Defendant, Derrick Crawley, pled guilty to sexual battery and was sentenced to serve two years on probation. The Defendant then pled guilty to a violation of the sex offender registry statute. A warrant was issued alleging a violation of probation, and after a hearing the Defendant's probation was revoked. On appeal, the Defendant contends that the trial court abused its discretion by revoking his probation because the State failed to prove that he willfully violated his probation. Concluding that no error exists, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Roger E. Nell, District Public Defender; James Stevens and Collier Goodlett, Assistant District Public Defenders, for the Appellant, Derrick Nevelle Crawley.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; John W. Carney, Jr., District Attorney General; Arthur Bieber, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**I. Facts**

On March 16, 2005, in case number 40400619, the Defendant pled guilty to sexual battery and was sentenced as a Range I standard offender to a two year suspended sentence. On July 18, 2005, the trial court issued a warrant for the Defendant's arrest upon allegations that he violated the terms of probation. On October 11, 2005, the Defendant admitted to violating the terms of probation whereupon the trial court ordered that he serve seventy days confinement with credit for seventy days served and reinstated the Defendant to probation. Also on October 11, 2005, in case number

40500759, the Defendant pled guilty to a violation of the sex offender registry statute. He was sentenced as a Range I standard offender to serve one year, with all but ninety days of the sentence suspended, consecutively with the sentence he received for the sexual battery conviction. On January 20, 2006, the trial court issued a second warrant for the Defendant's arrest upon allegations that he violated the terms of probation. At a hearing on the alleged violation, the following evidence was presented:

Brian Rives, the Defendant's probation officer, testified that the Defendant was subject to the sex offender treatment board conditions, which required the Defendant to receive counseling and treatment and to stay away from school grounds. Rives said that the Defendant made several initial appointments with a therapist, Randy Holtburg, but never attended the scheduled sessions.

Stephanie Elaine Grooms testified that she saw the Defendant standing next to some bushes at the end of a driveway leading to the parking lot of Burns Darden Elementary School. Grooms could not determine if the Defendant was actually standing on school property.

Investigator Jeff Morelock testified about arresting the Defendant for the violation of probation relating to the incident near Burns Darden Elementary School. He described how he went to the Defendant's residence and how the Defendant resisted by pulling away from, and cursing at, the officers. The Defendant hit an officer with his elbow.

Woodrow Sadler, the Defendant's caretaker who lives with the Defendant on a full time basis, testified that the Defendant was at home during the time that Grooms alleged the Defendant was near Burns Darden Elementary School. He testified that Dr. Holtburg's secretary said that the Defendant could not receive treatment because TennCare would not pay for the treatment until the court order was lifted. The Defendant and the State stipulated that the Defendant had not attended counseling since 2000.

The trial court stated:

[T]he biggest problem that I had was the allegation that you weren't going to get counseling; and the documentation here from the doctor, he hasn't seen you in – you since 2000. You just haven't gone to see him, and that was a condition, a very important condition; the most important condition of your probation was for you to continue to see your doctor, and you just haven't done it, you didn't do it . . . . If it was a situation where you hadn't been for two or three months, that would be one thing, but Dr. - - the doctor says he hadn't seen you in six years - - five years; five or six years. And so I find you in violation of your probated sentence by not attending your counseling and your therapy like you should be. And I don't know any other place to put you except back in jail.

The trial court then ordered the Defendant to serve the balance of his sentences in jail for both case number 40400619 and case number 40500759.

## II. Analysis

The Defendant contends that the trial court abused its discretion by revoking his probation and ordering him to serve the remainder of his sentences in confinement. Specifically, he argues that the State failed to prove that he willfully violated his probation. He also argues that the State presented no evidence that the Defendant's probation officer or treatment provider attempted to alleviate any impediments to the Defendant's access to treatment and no evidence to show that the Defendant was capable of attending treatment. The State contends that the trial court properly revoked the Defendant's probation.

A trial judge is vested with the discretionary authority to revoke probation if a preponderance of the evidence establishes that a defendant violated the conditions of his or her probation. See T.C.A. §§ 40-35-310, - 311(e) (2003); State v. Shaffer, 45 S.W.3d 553, 554 (Tenn. 2001). "The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment." State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). After exercising a conscientious judgment as to whether a Defendant has violated the terms of a probated sentence, the trial court must also exercise a conscientious rather than arbitrary judgment as to an appropriate disposition. State v. Steven Kelly Frazee, No. M2005-01213-CCA-R3-CD, 2006 WL 618300, at \*8 (Tenn. Crim. App., at Nashville, Jan. 24, 2006), *perm. app. denied* (Tenn. Aug. 21, 2006).

When a probation revocation is challenged, the appellate courts have a limited scope of review. This Court will not overturn a trial court's revocation of a defendant's probation absent an abuse of discretion. See Shaffer, 45 S.W.3d at 554. For an appellate court to be warranted in finding that a trial judge abused his or her discretion by revoking probation, "there must be no substantial evidence to support the conclusion of the trial court that a violation of the conditions of probation has occurred." Id.

In the case under submission, the trial court relied on the stipulated fact that the Defendant had not received any treatment as mandated by the terms of his probation for five to six years. The Defendant clearly violated the terms of his probation by not seeking therapy or counseling, which was required by the terms of his probation.

The Defendant also argues that the trial court must determine that his acts were "willful" in order for them to constitute a violation of probation. Our Supreme Court has previously opined that a revocation of probation based upon a defendant's failure to pay fines requires that the failure to pay be willful. State v. Dye, 715 S.W.2d 36, 41 (Tenn. 1986). However, the trial court need not make findings regarding a defendant's willfulness in regards to the failure to adhere to the other terms of his or her probation, such as conditions imposed upon him by his status as a sex offender. See State v. Julia Mosley, No. E2004-01787-CCA-R3-CD, 2005 WL 819734, at \*3 (Tenn. Crim. App., at Knoxville, Apr. 8, 2005); see also State v. Lamont Deshawn Rutland, No. M2005-01395-CCA-R3-CD, 2006 WL 1641248, at \*3 (Tenn. Crim. App., at Nashville, June 9, 2006). We conclude that the trial court did not abuse its discretion in revoking the Defendant's probation and ordering him to serve

his sentences in jail.

### **III. Conclusion**

Based on the foregoing reasoning and authority, we affirm the judgment of the trial court.

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ROBERT W. WEDEMEYER, JUDGE